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Commission des valeurs mobilières de l'Ontario
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Citation: Cheng (Re), 2018 ONSEC 43
Date: 2018-08-31
File No. 2017-13

IN THE MATTER OF
BENEDICT CHENG, FRANK SOAVE,
JOHN DAVID ROTHSTEIN and ERIC TREMBLAY

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	August 31, 2018	
Decision:	August 31, 2018	
Panel:	Mark J. Sandler	Commissioner and Chair of the Panel
Appearances:	Yvonne Chisholm Christina Galbraith	For Staff of the Commission
	Caitlyn Sainsbury	For Eric Tremblay

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the Hearing, and as edited and approved by the panel, to provide a public record.

[1] In 2014, Eric Tremblay was the Chief Executive Officer and Chairman of the Board of Directors of Aston Hill Financial Inc. (**AHF**), as well as the Ultimate Designated Person (**UDP**) of Aston Hill Asset Management Inc. (**AHAMI**), a wholly-owned subsidiary of AHF.

[2] Between January 2007 and September 2016, Benedict Cheng was the President of AHF and the Co-Chief Investment Officer at AHF and AHAMI. In 2014, John David Rothstein was a senior Vice President and National Sales Manager at AHAMI.

[3] On June 12, 2014, Amaya Inc. (**Amaya**) publicly announced a transaction whereby it would acquire all of the issued and outstanding shares of Oldford Group Limited, the parent company of the owner and operator of the PokerStars and Full Tilt Poker brands. The transaction was valued at over $4 billion US. This acquisition and related details constituted material facts respecting Amaya which were known to Cheng before they were generally disclosed.

[4] In related proceedings before this Commission, Cheng acknowledged that he informed Rothstein about some of these generally undisclosed facts.

[5] Staff examined Tremblay under oath on May 26 and June 16, 2016. During his examination by Staff, Tremblay denied any knowledge of Cheng informing Rothstein about material facts concerning Amaya before they were generally disclosed. This denial was false. The particulars of how and when Tremblay learned about Cheng's activities are set out in Part III of the settlement agreement between Staff and Tremblay, filed as an exhibit in today's proceedings, and need not be elaborated upon further in these brief oral reasons.

[6] It is agreed (and I so find) that Tremblay's conduct in making materially misleading statements to Staff under oath constitutes a violation of s. 122(1)(a) of the *Securities Act*, RSO 1990, c S.5.

[7] Tremblay's conduct constituted a serious breach of Ontario securities law. As reflected in existing jurisprudence, such conduct hinders Staff's performance of their responsibilities to monitor and enforce compliance with Ontario securities law, and thus constitutes an obstacle to effective regulation of the capital markets. This is particularly true in circumstances where Staff are investigating the misuse of insider information which, if proven, also constitutes a serious breach of the Act. It follows that conduct that interferes with Staff's ability to investigate such breaches has the potential of undermining the integrity of, and ultimately, public confidence in, the capital markets: see, in this regard: *Da Silva (Re)* (2012), 35 OSCB 8822 at para 7; *Wilder et al. v. Ontario Securities Commission* (2001), 53 OR (3d) 519 (CA) at para 22.

[8] The seriousness of Tremblay's conduct was compounded by the fact that (a) he misled Staff under oath and (b) he had been the UDP of AHAMI until August 31,

2015. As a recent UDP and registrant, he could be expected to understand the importance of cooperating with securities regulators.

[9] Staff and Tremblay reached a settlement agreement in relation to this matter. The full terms of settlement are reflected in that agreement. They include robust sanctions, including an administrative penalty of $125,000 and two-year bans, preventing him from participating in the capital markets. The bans are subject to limited carve-outs, similar to those granted in other cases. The agreement also provides for payment of $10,000 in costs associated with Staff's investigation. Pursuant to the settlement agreement, the $135,000 financial component of the settlement has already been paid.

[10] The settlement agreement also takes into consideration, as it should, several circumstances relied upon by Tremblay in mitigation. These include:

a. the absence of any prior record of breaching Ontario securities law;
b. the absence of any pattern of violation of securities law. This represented an isolated instance;
c. the absence of any trading on Tremblay's part on material information not generally disclosed or any personal profit derived from any such activity;
d. Tremblay's acknowledgment of wrongdoing, obviating the need for a contested hearing into the allegations against him; and
e. Tremblay is no longer a registrant and no longer works in the capital markets. This is relevant generally and more specifically, to the adequacy of the two-year bans.

[11] The Commission is only to deny approval of a settlement agreement in exceptional circumstances. As I have stated in *Cheng (Re)*, 2018 ONSEC 34 at para 8, "[t]his deference is explained, in part, by the high desirability of encouraging settlement agreements between Staff and respondents, and promoting certainty in the industry. Of course, the Commission is fully entitled to reject a settlement agreement which falls outside the range of reasonable outcomes available in the circumstances and thus, is contrary to the public interest. The Commission is to consider the terms of the settlement agreement in their totality, rather than consider each term in isolation."

[12] In my view, this settlement agreement falls within the range of reasonable dispositions available in the circumstances and is in the public interest. It contains a robust package of sanctions that address specific and more importantly, general deterrence. It takes into consideration the sanctions imposed in similar cases. Its terms appropriately reflect the features of Tremblay's conduct, including the circumstances cited by his counsel, that distinguish him from Cheng, who previously entered into a settlement agreement approved by the Commission. Its terms are also consistent with the terms agreed to by Rothstein who also entered into a settlement agreement.

[13] In summary, I am satisfied that the settlement agreement sends a strong and appropriate deterrent message, while reflecting those circumstances unique to Tremblay.

[14] For these reasons, I approve the settlement agreement on the terms proposed by the parties. An Order will be issued in substantially the form appended to the settlement agreement.

[15] I am grateful to all counsel for their assistance.

Dated at Toronto this 31st day of August, 2018.

"*Mark J. Sandler*"
Mark J. Sandler